

MINUTES

A meeting of the Alabama Real Estate Commission was held July 22, 2021 at the offices of the Alabama Real Estate Commission, 1201 Carmichael Way, Montgomery, Alabama. This meeting was also available by video teleconference (VTC).

Those present were Chairman Carole Harrison, Vice Chairman Reid Cummings, Commissioners Jimmie Ann Campbell, Joyce Harris, Terri May and Susan Smith. Commissioner Emmette Barran was absent with notice. The seats from the Sixth and Seventh Congressional Districts are currently vacant.

The meeting, having been duly noticed according to the Alabama Open Meetings Act, was called to order by Chairman Carole Harrison at 9:00 a.m. and a quorum was declared.

Commission staff members in attendance or participating via VTC for all or part of the meeting were Executive Director Vaughn Poe; Assistant Executive Director Teresa Hoffman; General Counsel Starla Van Steenis; Assistant General Counsel Zack Burr; Investigators K.C. Baldwin, David Erfman, Rickey Fennie and Marshall Simons; Communications and Public Relations Director Vernita Oliver-Lane; Communications and Public Relations Specialist Lori Moneyham; State Professional Trainee Jess Sparks; Education Director Ryan Adair; Education Specialists David Bowen and Julie Norris; Accounting and Personnel Director Molli Jones; Auditors Anthony Brown, Denise Blevins and Vickie Shackelford; Information Technology Director Brett Scott; Information Technology Systems Specialist Steven Brown; Licensing Director Anthony Griffin; Licensing Assistants Edward Arrington, Amber Green and Pam Taylor; and Executive Assistant Barbi Lee. The Hearing Officer was Jim Hampton.

Members of the public also attended via video teleconference.

Commissioner May made a motion to approve the minutes from the June 17, 2021 Commission meeting. Commissioner Campbell seconded the motion and it passed unanimously 7-0.

EXECUTIVE DIRECTOR'S REPORT

Executive Director Poe presented the June 2021 financial reports and gave commissioners an update on revenues and expenditures in the operating and recovery fund accounts. He stated anticipated negative impacts from COVID-19 for the current fiscal year did not occur as projected and the Commission has been able to capitalize on these additional revenues with increased new licensees and less expenses due to the COVID-19 reimbursement program. There have been no payments from the recovery fund and it is healthy and in good order. Long-term investments are doing well and gaining as projected. All financial accounts are healthy, in good order and compliant with policy. Director Poe reminded Commissioners that the Commission is not a general fund agency and that our financing, budgeting, successes and failures revolve around decisions made by the Commission. Our fees to other state agencies have been \$487,790.71.

Director Poe reported there were 39,347 licenses issued by the Commission and 4,833 of those were issued to companies (active and inactive). There has been a total of 5,421 new licenses issued since October 1, 2020. With an expected loss of ten percent of licensees during each renewal cycle, the number of new licensees has offset the anticipated loss.

Director Poe stated the Accounting Division reported 25 general audits were completed in June, including in-person and desk audits. At the Commission's request, "assistance visits" are now offered to newly-established companies with the intent of helping them properly set up company accounts. The goal of this service is to provide guidance upfront in hopes of avoiding infractions down the road. To date, 23 companies have requested assistance, four companies have been assisted and another 10 are scheduled to be completed in the next 30 days. A continuing effort is being made to audit any company that does not have a recent audit on file.

Director Poe discussed statistics for the Education Division. There are 828 total education licensees. The renewal cycle for education licensees is currently underway and only 25% of licensees have renewed. The renewal period ends on September 30, 2021. The Education Division completed seven audits during the month of June.

Director Poe provided an update regarding the fingerprinting and criminal history generating processes. He stated the processes are back on track. Most of those affected by the Alabama Law Enforcement Agency's (ALEA) conversion, which extended approximately 7 weeks, have had their licenses issued using alternative criminal history access tools. Staff members are, however, working with Gemalto's IT team to analyze the steps necessary to secure the missing reports. For some, this will require having their fingerprints reprinted at no additional cost.

Director Poe announced that Coffee with the Commission was a growing success. There were approximately 95 participants throughout the state during the July 21, 2021 broadcast. He stated that licensees really like this platform and appreciate the direct and immediate feedback. Chairman Harrison stated she was in attendance and questions that were asked regarded issues that the Commission had been discussing. The main topic of discussion regarded wholesalers. Director Poe stated that the Commission's legal staff is working to produce a legal opinion on this subject and it will be presented at the August 19, 2021 Commission meeting. Another topic was brick and mortar versus virtual offices and earnest money requirements. Coffee with the Commission is scheduled to continue as long as licensees see it as a benefit.

Director Poe reminded commissioners of upcoming ARELLO® meetings. The ARELLO® 2021 Annual Conference will be held September 15-19 in Orlando, Florida. In conjunction with the Conference, *Commissioner College 102* will be held on September 19. The registration deadline is Friday, August 27. The 2021 ARELLO® Regulatory Investigator Seminar will be held October 5-8 in Birmingham, Alabama. Alabama is the host state for this year's seminar and staff will be assisting the ARELLO® team.

At 9:18 a.m. Chairman Harrison announced the meeting was being stopped temporarily due to technical difficulties for those watching virtually.

At 9:36 a.m. the technical issue was resolved and the meeting was called back to order with Chairman Harrison, Vice Chairman Reid Cummings and Commissioners Jimmie Ann Campbell, Joyce Harris, Terri May and Susan Smith present.

Director Poe provided an outreach summary reminder to Commissioners and licensees. Briefly Legal was originally a newsletter that was emailed to licensees; however, it is now a quarterly Facebook Live session. This type of communication allows immediate communication between licensees and the Commission. Coffee with the Commission is a monthly session broadcast the day before the Commission meeting on Microsoft Teams. Monthly Commission meetings are available for in-person attendance and for livestreaming on Microsoft Teams. The Commission also maintains a website, arec.alabama.gov, and has an active presence on social media platforms Facebook, Twitter, Instagram and YouTube. The Commission's username on all its social media sites is ARECalabamagov. He stated the Communications and Public Relations team develops videos based on questions that are submitted to the Commission and concerns that are expressed by licensees.

Assistant Executive Director Teresa Hoffman provided a report from the ARELLO® Mid-Year Meeting that was held in San Antonio, Texas June 30- July 3, 2021. She indicated this was a hybrid meeting, allowing for in-person and virtual attendance. It was good for those who could be there in person to meet and be together again. The Mid-Year Meeting consists of very constructive committee work meetings and very few general sessions. Particularly informative sessions are: the Law and Regulation Committee, and Administrators', Commissioners', and Best Practices roundtables where colleagues from all around the country discuss different subjects and find other states dealing with the same issues as their own. Shared concerns at this year's meeting included wholesaling, qualifying brokers-in-charge and seeking to make them more professional, love letters, and escalation clauses. A question was asked if any jurisdiction was considering setting a licensee-to-broker ratio or a supervisory territory range. The answer across the board was no. The consensus was supervisory issues needed to be shown through actual violations or concerns rather than arbitrary miles and numbers. She stated that was sound advice given the Department of Justice's perspective on these topics.

Regarding wholesaling, Assistant Director Hoffman further explained there are two jurisdictions who are looking at legislation to address the practice and two who are looking at broadening their definition of activities requiring a license to bring some of these activities under their law. There is skepticism as to the success of real estate commissions regulating wholesaling. Additional research will be done and Alabama will keep a watch on what other states are doing and if they are successful. Relating to qualifying brokers-in-charge, remedies discussed relate to education, rulemaking and accountability for advertising. Two takeaways were discussed: (1) In Georgia, if a qualifying broker is found guilty of failure to supervise, the qualifying broker has had their license reduced in rank and lowered their responsibility. (2) In Kansas, the offending qualifying broker is required to draft a corrective action plan to be approved by the Kansas Real Estate Commission with a follow-up to ensure implementation. She also related that most agreed that love letters are something that regulators cannot disallow. However, several jurisdictions consider it a violation of their license law if you violate the Fair Housing Act. Regarding escalation

clauses, North Carolina’s regulation prohibits sharing offer terms without the buyer’s permission, whereas Idaho only requires the seller’s permission. In many jurisdictions, their REALTOR® association has drafted the recommended clauses and that is helping to clarify terms in these transactions. Assistant Director Hoffman is the current Chair of the Promoting Judicious Real Estate Regulation Task Force. This task force looks at threats to real estate licensing in general. She indicated with the anti-regulation and anti-occupational licensing sentiment that seems to be sweeping the country, it was interesting to know that all jurisdictions are feeling the impacts. Texas is under an order to reduce regulation and processes by over 50 percent. In Tennessee, no action will be signed by their governor unless it is some type of a reduction; Arkansas is feeling the scrutiny and criticism of their regulation; Nevada has been purging almost their entire body of rules; Arizona has been countering the pressure by pouring their efforts into services and direct education to consumers so that the value of regulation can be appreciated by the consumer and by their legislators. She explained why the Alabama Real Estate Commission’s outreach efforts are so important and a good investment of the Commission’s time.

Assistant Director Hoffman shared two concerns for the future: (1) There is an expectation for more contentious issues especially with multiple offers in a hot market. These could be due to increased virtual contact and less personal care by licensees. In Nevada, South Carolina and Wyoming offers are receipted at the time they are presented to the seller and the receipt is sent to the buyer’s agent. (2) Consumers are engaging in reckless behavior including waiving inspections, appraisal subsidizing and engaging with acceleration clauses.

Finally, when discussing Alabama’s concern with “proper notice”, especially since certified mail receipts are no longer signed and dated, it was discovered that the Kansas Real Estate Commission delivers all legal notices by electronic service. They have included a space on their license application and renewal license application for consent to electronic service and the email address is confirmed upon consent. Staff will research this to determine the legality of this for Alabama.

Other Commission staff members in attendance at the Mid-Year meeting included Executive Director Vaughn Poe, Education Director Ryan Adair, and General Counsel Starla Van Steenis.

Vice Chairman Cummings asked if Georgia’s authority to demote a qualifying broker for license law violation was by rule or statute. Assistant Director Hoffman stated she was unsure of Georgia’s authority, but would research to determine if this is an action that could be implemented in Alabama.

COMMISSIONER DISCUSSION

Adopt Proposed Rule Amendment and New Rules for Certification to Legislative Services Agency

1. Rule Amendment – 790-X-1-.06 Prelicense and Post License School Approval and Requirements

2. New Rule – 790-X-1-.22 Prohibition Against Contract Lobbyist
3. New Rule – 790-X-2-.26 Renewals During Military Deployment

Executive Director Poe reminded Commissioners the Public Hearing for this rule amendment and new rules was held July 22, 2021. with no opposition received in person nor by mail. He asked for their approval for adoption and filing certifications for rule amendment 790-X-1-.06 and new rules 790-X-1-.22 and 790-X-2-.26. Commissioner Smith made a motion to adopt the stated rules for certification to the Legislative Services Agency. Commissioner Campbell seconded the motion and it passed unanimously 6-0.

II. Approve for Filing Proposed Rule Amendments and New Rule with Legislative Services Agency

1. Rule Amendment – 790-X-1-.07 Qualifications for Prelicense and Post License Instructors
2. Rule Amendment – 790-X-1-.21 Distance Education Courses
3. Rule Amendment – 790-X-2-.01 Documentation Required for License Issuance
4. New Rule – 790-X-1-.23 Misuse of Agency Name, Initials, Logo, or Seal

Education Director Ryan Adair provided Commissioners with an overview of proposed rule amendments 1-3 to be considered. Rule Amendment 790-X-1-.07 provides the right for instructor applicants, with a previous license law violation, to request approval for instructor status from the Commission. Rule Amendment 790-X-1-.21 restructures the distance education rule separating synchronous distance education from asynchronous distance education. Rule Amendment 790-X-2-.01 allows the acceptance of diplomas to verify high school graduation for homeschooling, US schools and schools in other countries. Upon discussion of proposed rule amendments 790-X-1-.07, 790-X-1-.21 and 790-X-2-.01, Commissioner Campbell made a motion to approve filing these amendments with Legislative Services Agency. Commissioner Smith seconded the motion and it passed unanimously 6-0.

Director Poe explained that the purpose of filing of these rules was a direct result of recommendations from the Education Task Force s. The task force will be called upon again to discuss another recommendation to increase the requirements for prelicense education courses.

Director Poe explained that proposed new rule 790-X-1-.23 was being refiled with a change in the original language. Upon discussion of this proposed new rule, Commissioner Campbell made a motion to approve filing proposed new rule 790-X-1-.23 with Legislative Services Agency. Commissioner May seconded the motion and it passed unanimously 6-0.

Vice Chairman Cummings made a motion that Commissioners conduct disciplinary hearing disposition discussions in an open meeting. Commissioner Campbell seconded the motion and it passed unanimously 6-0.

HEARINGS

Alabama Real Estate Commission VS. Lydia Ann Taylor and River Region Rentals, Formal Complaint No. 3534

Lydia Ann Taylor, Qualifying Broker, River Region Rentals, Montgomery, Alabama, and River Region Rentals, Montgomery, Alabama were charged with violating the *Code of Alabama* 1975, as amended, Section 34-27-36(a)(8)b. by failing to deposit and account for at all times funds belonging to or being held for others in a separate federally insured account or accounts in a financial institution located in Alabama.

Upon discussion of the evidence and testimony presented in the matter, Vice Chairman Cummings made a motion to find Lydia Ann Taylor and River Region Rentals guilty. Commissioner May seconded the motion and it passed unanimously 6-0. Commissioner May made a motion to fine Ms. Taylor and River Region Rentals \$2,500 each with an indefinite suspension of her license beginning September 1, 2021. The suspension will remain in place pending a verification audit by Commission staff showing Ms. Taylor has verified, rectified, and properly balanced the two trust accounts. The audit is to be completed prior to the November 18, 2021 Commission meeting, at which the results of the audit will be provided to Commissioners. Commissioner Campbell seconded the motion and it passed unanimously 6-0.

Alabama Real Estate Commission VS. Cumberland Davis, Formal Complaint No. 3554

Cumberland Davis, Salesperson, Vance, Alabama, was charged with violating the *Code of Alabama* 1975, as amended, Section 34-27-36(a)(16) by the presentation to the Alabama Real Estate Commission, as payment, for a fee or fine, a check which was returned unpaid by the bank upon which it was drawn.

Upon discussion of the evidence and testimony presented in the matter, Vice Chairman Cummings made a motion to find Ms. Davis guilty and fine her \$150. Commissioner Smith seconded the motion and it passed unanimously 6-0

Keshia Brayboy, Application for Real Estate Salesperson's Temporary License, Investigative File I-21-197

Upon discussion of the evidence and testimony presented in the matter regarding Ms. Brayboy's application for a real estate salesperson's temporary license, Vice Chairman Cummings made a motion to deny her application. Commissioner Campbell seconded the motion and it passed unanimously 6-0.

Alabama Real Estate Commission VS. Jammie Reed Gray, Formal Complaint No. 3553

This hearing was continued until September 23, 2021.

Alabama Real Estate Commission VS. Tanesha Dionne Royal, Formal Complaint No. 3552

This hearing was continued until August 19, 2021.

Kelli Felix, Application for Real Estate Salesperson's Temporary License, Investigative File I-21-109

Upon discussion of the evidence and testimony presented in the matter regarding Ms. Felix's application for a real estate salesperson's temporary license, Commissioner Harris made a motion to approve her application. Vice Chairman Cummings seconded the motion and it passed unanimously 6-0.

Alabama Real Estate Commission VS. James Edward Park, III, Formal Complaint No. 3551

General Counsel Starla Van Steenis advised Commissioners that Mr. Park submitted an executed Not Appearing Waiver and entered a guilty plea. The facts of the case were presented.

James Edward Park, III, Qualifying Broker, Huntsville, Alabama, was charged with violating the *Code of Alabama* 1975, as amended, Section 34-27-36(a)(16) by the presentation to the Alabama Real Estate Commission, as payment, for a fee or fine, a check which was returned unpaid by the bank upon which it was drawn.

Upon discussion of the evidence and testimony presented in the matter, Vice Chairman Cummings made a motion to accept Mr. Park's guilty plea. Commissioner May seconded the motion and it passed unanimously 6-0. Vice Chairman Cummings made a motion to fine him \$250. Commissioner Harris seconded the motion and it passed unanimously 6-0.

Adam Joel Haynes, Request for Relicensure after Felony Conviction, Investigative File I-21,190

General Counsel Starla Van Steenis advised Commissioners that Mr. Haynes had withdrawn his application and the hearing was dismissed.

NOT APPEARINGS

Janis White, Application for Real Estate Salesperson's Temporary License, Investigative File I-21-176

Upon review of Ms. White's application for a real estate salesperson's temporary license, Commissioner May made a motion to approve her application. Commissioner Harris seconded the motion and it passed unanimously 6-0.

Rosa Ruffin, Application for Real Estate Salesperson's Temporary License, Investigative File I-21-093

Upon review of Ms. Ruffin's application for a real estate salesperson's temporary license, Commissioner Harris made a motion to approve her application. Commissioner May seconded the motion and it passed unanimously 6-0.

Alan B. Lichtenstein, Hardship Request for Home Operation, Investigative File I-21-270

Upon review of Mr. Lichtenstein's hardship request for home operation, Commissioner Harris made a motion to approve his request. Commissioner Smith seconded the motion and it passed unanimously 6-0.

Confirm September Meeting Date and Location for the Record: September 23, 2021, 9:00 a.m. in Montgomery, Alabama.

Commissioner May made a motion to confirm the September meeting for September 23, 2021 at 9:00 a.m. in Montgomery, Alabama. Commissioner Campbell seconded the motion and it passed unanimously 6-0.

Next Commission Meeting: Thursday, August 19, 2021, 9:00 a.m. in Montgomery.

There being no further business, Vice Chairman Cummings made a motion to adjourn the meeting at 12:05 p.m. Commissioner Smith seconded the motion and it passed unanimously 7-0.

Done this 22nd day of July 2021.

Carole Harrison, Chairman

Barbi Lee, Recording Secretary